THE HONOURABLE SRI JUSTICE N.V.RAMANA

Writ Petition Nos.22049, 22413 and 22414 of 2005

Dated: 2nd November, 2006

W.P.No.22049 of 2005

Between:

The Chief Executive Officer, Zilla Parishad,
Warangal, Subedari, Hanamkonda,
Warangal District. **…..PETITIONER**

AND

The Controlling Authority Under the Payment
Of Gratuity Act, 1972 and the Asst. Commissioner
Of Labour, Warangal –1 and 2 others. **….RESPONDENTS**

W.P.No.22413 of 2005

Between:

The Chief Executive Officer, Zilla Parishad,
Warangal, Subedari, Hanamkonda,
Warangal District. **…..PETITIONER**

AND

The Controlling Authority Under the Payment
Of Gratuity Act, 1972 and the Asst. Commissioner
Of Labour, Warangal –1 and 2 others. **….RESPONDENTS**

W.P.No.22414 of 2005

Between:

The Chief Executive Officer, Zilla Parishad,
Warangal, Subedari, Hanamkonda,
Warangal District. **…..PETITIONER**

AND

The Controlling Authority Under the Payment
Of Gratuity Act, 1972 and the Asst. Commissioner
Of Labour, Warangal –1 and 2 others. **….RESPONDENTS**

THE HONOURABLE SRI JUSTICE N.V.RAMANA

Writ Petition Nos.22049 of 2005, 22413 of 2005 and 22414 of 2005.

COMMON ORDER:

The Chief Executive Officer, Zilla Parishad, Warangal, has filed these three writ petitions assailing the common order dated 13.09.2000, passed by the 1st respondent-Assistant Commissioner, in P.G. Nos. 1 and 2 of 1998 and 5 of 1999 and the consequential distraint order, dated 15.09.2005, issued by the 2nd respondent-Deputy Commissioner, as illegal and arbitrary.

The 3rd respondent-workmen, who retired from the office of the petitioner, as Attender on attaining the age of superannuation, filed applications in P.G. Nos. 1 and 2 of 1998 and 5 of 1999, accompanied with a condone delay petition before the 1st respondent, seeking relief of payment of gratuity. The petitioner contested the said applications, by filing written arguments *inter alia* contending that the Government have issued G.O. Ms. No.168, dated 20-3-1981 and G.O. Ms. No.265, dated 28-6-1999, treating the employees of Panchayat Raj Department on par with the Government employees, and as such, the applicants-3rd respondent herein, are governed by the provisions of the A.P. Ministerial Service Rules. The 3rd respondent-workmen, even received pension under the provisions of the A.P. Revised Pension Rules, 1980, and they having received the pension, cannot claim benefits under the Payment of Gratuity Act, 1972. However, the 1st respondent passed order dated 13.09.2000 directing payment of gratuity, determined therein. As the petitioner failed to pay the same, the 2nd respondent issued consequential distraint order. Assailing the said order, the petitioner filed the present writ petitions.

The learned counsel for the petitioner submits that the 1st respondent, without considering the written arguments submitted by the petitioner, passed common order dated 13.09.2000 directing deposit of the difference of gratuity amounting to Rs. 93,274/-, which is illegal and arbitrary. He further submitted that though the petitioner submitted his explanation, *inter alia* stating that the Payment of Gratuity Act, 1972 has no application in the case of their employees, yet the 2nd respondent without considering the same, has passed consequential distraint orders dated 15.09.2005, directing the petitioner to pay Rs. 93,274/-, as determined by the 1st respondent, within 24 hours of its receipt, failing which, the property under the distraint order would be brought to sale. The said two orders, of the 1st and 2nd respondent, according to the petitioner, are illegal and arbitrary and prays to set aside the same and allow the writ petitions.

On 6-10-2005, while admitting the writ petitions, this Court granted interim suspension of operation of the common order dated 13-9-2000 of the 1st respondent as well as the distraint order dated 15.09.2005 of the 2nd respondent, on condition of the petitioner depositing 1/4th of the determined amount, before the 1st respondent, within a period of three weeks from the date of receipt of the said order.

To vacate the aforesaid order, the 3rd respondent petitions to vacate the interim orders dated 6-10-2005, passed by this Court. Reiterating the stand taken by the 3rd respondent in the counter, the learned counsel for the 3rd respondent submitted that petitioner has an effective alternative remedy by way of appeal under Section 7(7) of the Payment of Gratuity Act, 1972 before the 2nd respondent, and the petitioner without exhausting the said remedy, has straight away approached this Court by way of this writ petition, which cannot be entertained.

Reacting to the stand taken by the 3rd respondent, the learned counsel for the petitioner submitted that the petitioner is questioning the very jurisdiction of the 1st respondent to entertain the claim of the 3rd respondent, and as such, he is entitled to maintain the writ petition

without exhausting the alternative remedy of appeal. He further submitted that if the petitioner is asked to avail the remedy of appeal, the petitioner to prefer appeal, would be required to deposit the entire amount of gratuity, as determined by the 1st respondent, in his order, which is without jurisdiction, and in the event, the amount of gratuity, as determined by the 1st respondent, is deposited and the 3rd respondent is allowed to withdraw, then the petitioner will be left with no remedy to recover the same from the 3rd respondent in the event the petitioner succeeds in the appeal.

Heard the learned counsel for the petitioner as also the learned counsel for the respondents and perused the material on record.

The law is well settled that when effective alternative remedy is available against an order of an authority, the said remedy cannot be bypassed. The jurisdiction of this Court by way of writ petition, despite availability of effective alternative remedy can be entertained only if it is filed for enforcement of any of the fundamental rights or where there has been a violation of the principles of natural justice or where there has been a violation of the principles of natural justice or where the order or proceedings are wholly without jurisdiction or the vires of an Act is challenged.

It is not merely on the ground that the 1st respondent has no jurisdiction to entertain the claim of the 3rd respondent, the petitioner has filed the writ petition. The petitioner, in fact, has sought to invoke the jurisdiction of this Court because to prefer appeal, he will have to deposit the amount as determined by the 1st respondent. The ground taken by the petitioner, certainly cannot be a ground to invoke the jurisdiction of the Court by bypassing the remedy of appeal available to him against the order of the 1st respondent before the 2nd respondent under Section 7(7) of the Payment of Gratuity Act, 1972. This Court, in W.P. No. 14872 of 2006 and batch, considered similar contention raised in a matter arising under the Shops and Establishments Act, 1988, and negatived the same.

At this stage, the learned counsel for the petitioner submitted that a direction be given to the 2nd respondent to injunct the 3rd respondent from withdrawing the amount, which he would be depositing along with the appeal. Inasmuch as the appellate authority,

who is conferred with the power of entertaining the appeal, also has incidental power of taking actions, pending appeal, like granting stay etc., to ensure that the appeal before him is not frustrated, I deem it appropriate to dispose of the writ petitions with the following directions:

Petitioner is directed to prefer appeals against the order of the 1st respondent before the 2nd respondent in terms of the provisions of Section 7(7) of the Payment of Gratuity Act, along with applications, seeking to injunct the 3rd respondent from withdrawing the amounts to be deposited by the petitioner along with the appeals, within a period of four weeks from the date of receipt of a copy of this order, and if any such applications along with the appeals are filed, the appellate authority, shall having regard to the incidental power vested in him, shall consider the injunction applications, and pass appropriate orders thereon. The petitioner is at liberty to raise the question of jurisdiction of the 1st respondent to entertain the claim of the 3rd respondent before the 2nd respondent in appeal.

Accordingly, the writ petitions are disposed of. No costs.

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(N.V. RAMANA, J.)

Date: 2nd November, 2006.

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